HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 16580 of 2006

Between:

Mahaboob Subhani Chilla, represented by its President,
Mohd. Naseer, D.No.28-3-891,
Yellareddyguda, Ameerpet, Hyderabad

…Petitioner

AND

The Commissioner, Excise and Prohibition,
Nampally, Hyderabad and others.

…Respondents

Counsel for the petitioner: Petition

Counsel for Respondents: Government Pleader for
Prohibition and Excise.

Dated: 11-9-2006

ORDER:

Per G.S.Singhvi, CJ

Letter dated 29-7-2006 sent by Sri Mohd. Naseer, President, Mahaboob Subhani Chilla with the complaint that the authorities of the Excise Department have permitted opening of wine shop near temple and Chilla Mahaboob Subhani and Majid-E-Aqthar Unnisa Begum at D.No.8-3-323, Yellareddyguda, Ameerpet, Hyderabad was treated by one of us (the Chief Justice) as petition in public interest.

In response to the notice issued by the Court, Sri G.Keshava Rao, Prohibition and Excise Superintendent, Nampally, Hyderabad has filed counter-affidavit dated 28-8-2006 along with four unmarked documents. In paragraphs 4 to 9 of his affidavit,

Sri G.Keshava Rao has averred as under:

> "4. It is submitted that Sri M.Naveen Goud is the successful auction purchaser for Rs.45,45,450/- of shop No.108 notified in Ward No.30 Yellareddyguda No.1. Originally he was given licence at D.No.8-3-330, Yellareddyguda, Hyderabad-73 after fulfillment of all formalities as per the Gazette Notification dated: 27-5-2006 Collector and District Magistrate, Hyderabad and further he has fulfilled Rule 27 of the A.P.Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 with regard to distance limit that the shop is away from the objectionable places. As the successful auction purchaser could not open the shop there due to dispute between the owner of the premises and on account of public agitation for opposing the A5 shop in these premises. The auction purchaser has applied for shifting of the shop to D.No.8-3-322/1/A, Yellareddyguda, Hyderabad after paying shifting fee Rs.45,500/- i.e., @ 1% of total lease amount and after obtaining Hon'ble High Court interim directions in W.P.M.P.No.18127 of 2006 in W.P.No.14561 of 2006 dated 21-7-2006 which reads as follows:

"Prima facie, it appears that the amendment to Rule 27 under G.O.Ms.No.598, dated 26-6-2006 said to have been published in the Gazette on 26-6-2006 was not made known to the intending bidders in response to the auction notice dated 27-5-2006.

5. Hence, there shall be a direction to the respondents to issue licence to the petitioner without having regard to the Amended Rule 27, provided he is otherwise eligible and further such licence shall be subject to further orders in this writ petition.

6. In accordance with the Hon'ble High Court direction permission was accorded for shifting of shop to premises No. 8-34-322/1/A, Yellareddyguda, Hyderabad subject to final disposal of W.P.No.14561 of 2006.

7. However, it is submitted that the petitions of the petitioner in the present W.P., was duly forwarded to SHO Ameerpet and AES Hyderabad for enquiry. During the enquiry, the SHO Ameerpet reported that there is one temple by name "Sonabai temple" and also "Chilla Mahaboob Suhynai" which is located within 100 metres distance from the shifted licensed premises D.No.8-3-322/1/A, Yellareddyguda. It is further reported by the SHO that it is not known whether the said Chilla is Muslim religious place or not but however, a temple is located within 100 meters which is registered by the Endowments Department. The SHO has recommended for shifting on the basis of Hon'ble High Court orders in W.P.M.P.No.18127 of 2006 in W.P.No.14561 of 2006 dated 21-7-2006 filed by the auction purchaser Sri M.Naveen Goud and after payment of shifting fee of Rs.45,500/- i.e., 1% of the total lease amount.

8. It is submitted that shifting to D.No.8-3-322/1/A, Yellareddyguda was accorded vide Proh. & Excise Supdt., Hyderabad Lr.No.B1/108/2006/ESH, Dated 26-7-2006 in terms of the Hon'ble High Court interim orders in W.P.M.P.No.18127 of 2006 in W.P.No.14561 of 2006 dated 21-7-2006 subject to final disposal of the W.P.No.14561 of 2006. Therefore, the licence is issued only on temporary basis.

9. However, it is further submitted that the auction purchaser could not open the shop in the said premises till today due to representations by the Chilla Committee Members and other local public. It is submitted that the

licenced shop is not at all functioning at present in D.No.8-3-322/1/A, Yellareddyguda, Hyderabad which is within 100 meters from the temple since the auction purchaser could not open the shop due to public resistance. It is not a fact that the shop is opened on 27-7-2006 in the presence of police since the auction purchaser was not allowed to open shop though he has attempted to open shop. Therefore, it is virtually that the liquor shop is not functioning in the said premises and it is also known that the auction purchaser is trying to select another suitable premises to secure licence."

After perusing the above reproduced averments contained in the affidavit of Prohibition and Excise Superintendent, Nampally, Hyderabad, we enquired from learned Government Pleader for Prohibition and Excise whether there is any move to permit the licensee to locate the wine shop within 100 meters of the places of public worship or educational institutions or hospitals. In reply, learned Government Pleader gave out that the licensee shall not be granted permission to operate liquor shop in violation of the distance criteria specified in Rule 27 (1) of the Andhra Pradesh Excise (Lease of Right of Selling by Shops and Conditions of Licence) Rules, 2005.

In view of the statement made by the learned Government Pleader, no order is required to be passed on the merits of the grievance made by the petitioner and the writ petition is liable to be disposed of as infructuous. Ordered accordingly.

The Registrar (Judicial) is directed to send a copy of this order to Sri Mohd. Naseer, President, Mahaboob Subhani Chilla, D.No.28-3-891, Yellareddyguda, Ameerpet, Hyderabad so that if any such contingency arises, he may file an application for revival of the writ petition.

G.S.SINGHVI, CJ

11th September, 2006

C.V.NAGARJUNA REDDY, J

GRR